

## Terms and Conditions for PUBLISHERS

### smartclip Spain

These Terms and Conditions for Publishers together with the associated Purchase Order(s) (this “**Agreement**”) govern use by “**Publisher**” of the “**Network**” to receive, download and make available “**Ads**” from Advertisers on “**Publisher Web Sites**” (as such terms are defined herein).

**1. Definitions.** For purposes of this Agreement, in addition to the bold capitalized terms defined elsewhere in this Agreement, the following terms shall have the meanings given to them below.

- 1.1 “**Ad**” or “**Advertisement**” means text-based, graphical, interactive, rich media and video, or other online advertisements, including, without limitation, banners, buttons, towers, skyscrapers, pop-ups, pop-unders and video advertisements.
- 1.2 “**Advertiser**” means the person or entity providing the Advertisement.
- 1.3 “**Behavioural Data**” means any or all of the data collected for the purposes of Behavioural Targeting.
- 1.4 “**Behavioural Targeting**” shall mean the use of previous online user activity (e.g., pages visited, content viewed, searches, clicks and purchases) to generate a segment which is used to match an advertising creative to users. Behavioural targeting includes anonymous, Non-PII data.
- 1.5 “**Collected Data**” means all End-User and other information gathered by the use of Smartclip Code in combination with the placement of the Ad on Publisher Website.
- 1.6 “**Confidential Information**” has the meaning given in Section 12.
- 1.7 “**CPM Publisher**” means any Publisher that is not a Revenue Share Publisher.
- 1.8 “**Effective Date**” means date of signature of the Purchase Order.
- 1.9 “**End-Users**” means users of a Publisher Web Site.
- 1.10 “**Fees**” means those certain fees indicated in the associated Purchase Order(s).
- 1.11 “**Intellectual Property Rights**” means all works of authorship, registered copyrights, common law copyrights, registered trademarks, common law trademarks, trade dress, labels, designs, logos, patents, patent applications, know-how, trade secrets, database rights, design rights and all other intellectual property rights and associated good will (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.
- 1.12 “**Metadata**” means the information relating details about a particular piece of video content. As an example, this information typically includes descriptive elements like name,

title, creation date, upload date, criteria related to each frame (people, places, objects, dialogue, subject matter) or larger business concerns such as rights management (geographical/regional restrictions, music issues, content, etc.) or content related details like characters, actors, scene details, locations, behavioral information, etc.)

- 1.13 **“Network”** means Smartclip Company’s system and related tools that enable an Advertiser to purchase inventory and distribute Ads through the Network and to manage and administer the foregoing. At the same time, the Network allows Publisher to receive, download and make available Ads for presentation to its End-Users on Publisher Web Sites.
- 1.14 **“Non PII data”** shall mean data that cannot uniquely identify a consumer. Examples include name, social security number, postal address and email address.
- 1.15 **“Party”** in the context of this Agreement means either Smartclip or Publisher; **“Parties”** means both Smartclip and Publisher cumulatively.
- 1.16 **“Publisher”** means the person or entity, which makes available Ads to End-Users via its Publisher Web Sites. Publisher means both Revenue Share Publisher and CPM Publisher.
- 1.17 **“Publisher Web Site”** or **“Site”** means a Web site of a Publisher who elects to include such Web site in the Network and to make it available to its End-Users.
- 1.18 **“Revenue Share Publisher”** means any Publisher that has a Revenue Share Agreement with Smartclip.
- 1.19 **“Smartclip”** means the legal entity as identified in the Purchase Order, as the purchaser of webspace, by which it can place Ads on Publisher Web Sites through the Network.
- 1.20 **“Smartclip Code”** means the software provided by Smartclip to the Publishers for installation on the Publisher Web Sites allowing to properly displaying the Ads and otherwise.
- 1.21 **“Smartclip Company”** shall mean Smartclip and other related entities.
- 1.22 **“Term”** has the meaning given in Section 7.

**2. Purchase Orders.** From time to time, Smartclip and Publisher may negotiate purchase orders (each a **“Purchase Order(s)”**) under which Smartclip will purchase web space in order to place Ads on Publisher Web Sites through the Network. Purchase Order(s) will be binding only if accepted and signed by Smartclip and Publisher. Each Purchase Order will specify: (a) the type(s) and amount(s) of web space to be provided by Publisher on Publisher Web Sites for the Ad as specified in each Purchase Order; (b) the price(s) for such web space; (c) the guaranteed minimum amount of page impressions and/or profiles generated (if applicable); (d) the start and end dates of the campaign; (e) the identity of and contact information for any third party Ad server (if applicable). Other items that may be included are, but are not limited to: reporting requirements such as impressions or other performance criteria; any special Ad delivery scheduling and/or Ad placement requirements; and specifications concerning ownership of data collected.

### **3. Use of Network.**

- 3.1 Use of Network. Publisher agrees to use, and Smartclip agrees to make available, the Network during the Term in order to receive, download and make available Ads from Advertiser on Publisher Web Sites according to the terms and conditions of this Agreement. As between Publisher and Smartclip, Publisher shall be solely responsible for reception, download and making available of all Ads and all technical necessities in order to address the End-Users via its Publisher Web Sites.
- 3.2 License Grant. Smartclip hereby grants to Publisher a non-exclusive, non-transferable, non-sublicensable right and license during the Term to access and use the Network solely in accordance with Smartclip's usage requirements and Site Accreditation Requirements according to Section 4. Such usage requirements and Site Accreditation Requirements may be altered and/or amended by Smartclip from time to time.
- 3.3 Restrictions. Except as set forth in this Agreement, Publisher agrees not to (a) reproduce or distribute the Network, or any portion thereof; (b) use or authorize use of the Network for any purpose not specified in this Agreement; (c) copy, transfer, sell, lease, syndicate, sub-syndicate, lend, or use for co-branding, timesharing, service bureau, arbitrage or other unauthorized purposes the Network or access thereto; or (d) modify, prepare derivative works of, translate, reverse engineer, reverse compile, disassemble the Network or any portion thereof, (e) allow third parties to use any Ad received, downloaded and made available by Publisher without Smartclip's prior written approval, or attempt to do any of the foregoing.
- 3.4 No Implied Licenses. Except to the extent set forth herein, (a) Smartclip does not grant to Publisher any other license, express or implied, to Smartclip's Intellectual Property Rights and (b) nothing in this Agreement or the performance thereof, or that might otherwise be implied by law, will operate to grant either Party any right, title or interest, implied or otherwise, in or to the Intellectual Property Rights of the other Party. Smartclip expressly reserves all Intellectual Property Rights not expressly granted hereunder.
- 3.5 Availability of Network. Publisher understands and agrees that from time to time the Network may be inaccessible, unavailable or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which Smartclip may undertake from time to time; or (iii) causes beyond the control of Smartclip or which are not reasonably or digital foreseeable by Smartclip, including, without limitation, interruption or failure of telecommunication transmission links, hostile network attacks, the unavailability, operation, or inaccessibility of Sites or interfaces, Network congestion or other failures.

**4. Site Accreditation Requirements.** Publisher acknowledges that Publisher Web Sites must meet the following criteria: (a) Publisher Web Site is permanently available to End-Users and meets technical and graphical state of the art expectations; (b) Publisher Web Site is not: under construction, hosted by a free service, a personal home page or operated under a domain that is not owned by Publisher; (c) Publisher either owns or is entitled to use the content displayed on all URLs on which the Ad is made available to End-Users; (d) Publisher Web Site does not knowingly include any virus or other destructive programming or device that could impair or injure any data, computer system or software of Smartclip, Advertiser or the Network as such; (e) Publisher Web Site does not

knowingly violate any applicable laws or regulations, including without limitation, false or deceptive or comparative advertising laws, gaming and gambling laws, competition laws, and criminal laws; (f) Publisher Web Site does not contain content that is defamatory, violates any rights of privacy or publicity or constitutes a misrepresentation; (g) Publisher Web Site does not produce or contain adult content; (h) the content of Publisher Web Site does not and will not infringe any Intellectual Property Rights or other proprietary rights; (i) Publisher does not engage in, promote or knowingly facilitate activities such as pirating, hacking or any other activities which are illegal; (j) Publisher will use all reasonable endeavours not to include on the site those types of content forbidden by the IASH Code of Conduct and marked as “barred inventory” in Schedule C of the IASH Code of Conduct (downloadable at [www.iash.org.uk](http://www.iash.org.uk)), such as hate content, obscenity and indecency, bombs/guns/ammunition, invalid clicks (non-human clicks), spyware, unauthorised code request; (k) Publisher operates an efficient “notice-and-take-down” mechanism and policy that complies with applicable law (currently the Electronic Commerce (EC Directive) Regulations 2002) in respect of unlawful activity or content contributed to Publisher Web Site without Publisher’s knowledge or awareness of its unlawfulness; (l) Publisher will use all reasonable endeavours to ensure that inventory booked on its Publisher Web Site will not be re-sold or re-brokered.

- 4.1 Placement of Ad. Publisher shall be solely responsible for placing Ads on the Publisher Web Sites. No Ad may be placed on any root URL not specifically approved by Smartclip for membership within the Network. Banner, leaderboard, skyscraper and wide range skyscraper Ads must be placed within six hundred (600) pixels of the top of the Publisher Web Site (above the page scroll/fold), unless agreed otherwise by Smartclip. Smartclip pop-under or in-vue windows cannot be launched from Sites that launch more than a total of two pop windows, including the Smartclip pop-under or in-vue. Skyscrapers or wide skyscrapers and half page formats cannot be placed on the same page, unless agreed otherwise by Smartclip. Publisher may not place Ads on blank pages, on pages with no content, on top of one another, on non-approved Sites, or in such a fashion that may be deceptive to the End User. Ads may not be placed in email messages.
- 4.2 Specifications for Video Ads. As far as Publisher uses Smartclip video Ad services, the following additional terms apply. (a) Smartclip reserves the right to place its name and logo in any video sequence for reference. (b) Should Publisher use non-Advertisement video from the Network, Smartclip reserves the right to include in stream or overlay advertisement at any time and in any possible manner in the surrounding of videos, such as in-video sequences, corresponding text etc. (c) Smartclip reserves the right to include Metadata which forms part of the video and may not be removed or otherwise remodeled by Publisher before making it available on Publisher Web Sites. (d) As Smartclip videos may be subject to third party Intellectual Property Rights, Publisher may not at any time copy, modify, translate, publish, transfer, distribute, broadcast, show or sell any video content published on its Publisher Web Site. (d) As far as videos made available by Publisher on Publisher Web Site include music, Publisher shall be solely responsible for possibly occurring licensing fees and payment obligations vis-à-vis collecting societies.
- 4.3 Removal and Replacement of Ad. Publisher shall have the right to remove from its Site any Ad where the advertising material or the site to which the Ad is linked does not comply with Publisher’s policies, applicable laws or where it is likely that the Ad or the site to which it is

linked bring disparagement, ridicule or scorn upon Publisher. Publisher must immediately notify Smartclip in case of such removal, provide written explanation to Smartclip and shall be cooperative as to mutually acceptable alternative Ad from the same Advertiser as replacement. Smartclip may request any time without reason that Ads shall be removed from Publisher Web Site with immediate effect. Smartclip may, if possible, delete any such content from the Network. Smartclip will try to provide alternative Ad from the same or other Advertisers as replacement, however, Publisher does not have right to replacement of Ads removed in that context.

- 4.4 No Modification of Ad. Publisher will not edit or modify the Ad in any way, including without limitation resizing, altering, and changing the Ad. Publisher will display Ad as-is as specified in the Purchase Order(s) and provided in the Network.
- 4.5 No Modification of Smartclip Code. Smartclip Code shall not be modified without prior written consent from Smartclip. Publisher agrees to use the Smartclip Code provided by Smartclip for displaying an Ad not more than once per page view. Publisher cannot alter, copy, modify, take, sell, reuse, or divulge any Smartclip Code, except as is necessary to partake in the Network, provided, however, with the prior written approval of Smartclip, Publisher may, in certain instances, modify the Smartclip Code for purposes of inserting certain language pre-approved by Smartclip either above or below an Ad served by Smartclip. Any modifications to Smartclip Code shall be owned solely by Smartclip. Subject to the terms and conditions of this Agreement, Smartclip grants Publisher a world-wide, revocable, non-exclusive, non-transferable, non-sublicensable, limited use license to use, execute, and display the Smartclip Code solely for purposes of receiving and displaying the Ads and performing Publisher's other obligations hereunder. Except for the limited license expressly granted in this Section, nothing in this Agreement shall be construed as Smartclip granting Publisher any right, title or interest in or to the Smartclip Code or any right under any patent, trade secret or other intellectual property rights of Smartclip. Publisher acknowledges and agrees that Smartclip owns all right, title and interest in and to the Smartclip Code (including, without limitation, all software and technology underlying any such product, service, and/or information) and all related intellectual and proprietary rights of any kind anywhere in the world. Publisher agrees that it will not use the Smartclip Code, or the results created thereby, or disseminate or distribute any of this information, except as expressly permitted by this Agreement.
- 4.6 Context of Ad Publication. Publisher may not place the Ad in a discriminatory or illegal context or in a way that could bring disparagement, ridicule or scorn upon Advertiser or Smartclip and Publisher will use reasonable endeavours to ensure a certain level of editorial quality of its content.
- 4.7 Traffic. Publisher will use reasonable endeavours to attract viewers on its Publisher Web Site and to meet with the minimum page impressions as agreed with Smartclip in the Purchase Order(s).
- 4.8 Fraud and Deception. Smartclip reserves the right to and will perform audits of the traffic on Publisher's Web Site. Publishers that commit fraudulent activities, including false clicks, false impressions, and incentivized clicks, will have their account permanently removed from

the Network and will not be compensated for fraudulent traffic. Additionally, Smartclip reserves the right to register fraudulent Sites in a global ad network fraud database, for usage by other ad networks. Smartclip has several fraud mechanisms at its disposal that will detect most forms within a few days of the initial activity. All proceeds from accounts with fraudulent activity will have to be refunded to Advertisers. All Ads must be served from an Smartclip server or serving location, or through an Smartclip approved third party-hosted server. Stored images that are loaded from a different location will not count towards any statistic or payment. Publisher agrees to not artificially inflate traffic counts using a program (including scripts), device, or other means. Excessive page reloading or any other abuse of Smartclip's system could result in legal action. No Publisher shall induce visitors to click on Ads based on incentives, provided, however, that, with the prior written approval of Smartclip, certain language may appear above or below an Ad served by Smartclip. Without limiting the foregoing, the following methods of generating visitor interest are unacceptable to Smartclip and may be grounds for dismissal from the Network: use of unsolicited email or inappropriate newsgroup postings to promote Publisher Web Site; auto-spawning of browsers; automatic redirecting of End-Users; Publisher's clicking on own banners; blind text links; misleading links; or any other method that may lead to artificially high numbers of impressions or clicks.

- 4.9 Collected Data. Smartclip owns all Collected Data gathered by or through Smartclip Code and/or any or all reports, results, and/or information created, compiled, analyzed and/or derived by Smartclip from such data. The Publisher agrees that Smartclip shall be permitted to collect Behavioural Data for the purposes of using this information for Behavioural Targeting of Advertisers from the Publisher's site. All Collected Data shall be deemed Smartclip's Confidential Information. Any use of such Collected Data by Publisher shall be only as expressly permitted in this Agreement and in strict compliance with Smartclip's privacy policy. Publishers may only access Collected Data that is gathered through the use of their own inventory.

## **5. Fees; Calculations.**

- 5.1 Fees. On a monthly basis, CPM Publishers shall invoice Smartclip and Smartclip will pay Publisher the Fees set forth in the associated Purchase Order(s). Revenue Share Publishers shall be invoiced by Smartclip. Smartclip will pay all Fees within forty five (45) days of the end of the month.
- 5.2 Changes. Subject to Publisher's termination right in Section 7.4, Smartclip may increase or decrease the Fees, or the type and structure of Fees, charged by Publisher in its sole discretion upon thirty (30) days' notice to Publisher.
- 5.3 Payment Method. Smartclip will pay all Fees by check or by wire transfer to an account specified by Publisher on written notice to Publisher, PayPal or by other means expressly agreed to in writing between the Parties. Smartclip will be responsible for and shall pay all applicable sales taxes pertaining to Publisher's invoice related to the use of the Network.
- 5.4 Calculations. Smartclip will be the sole arbiter in determining the number of impressions, clicks, actions, or other applicable metric, delivered, shown, produced, clicked on, or viewed

unless otherwise indicated in Purchase Order. Smartclip will be solely responsible for determining Fees to Publishers hereunder.

## **6. Use of Network Data.**

- 6.1 By Publisher. Publisher acknowledges that, in the course of using the Network, it may have access to data and information, including the Targeting Criteria, regarding Publisher Web Sites and End-Users (“Network Data”). Publisher agrees that all Network Data will be used solely in connection with Publisher’s use of the Network and will be treated as the Confidential Information of Smartclip.
- 6.2 By Smartclip. Smartclip may use and disclose data derived from Publisher’s use of the Network (a) as part of Smartclip’s business operations, on an aggregate basis (absent Advertiser’s prior consent) such that any use or disclosure does not permit a third party to associate any particular data with Publisher; and (b) if required by court order, law, or governmental agency. In addition, Smartclip may use data derived from Publisher’s use of the Network to operate, manage, maintain, and improve the Network.

## **7. Term; Termination.**

- 7.1 Term. Unless terminated earlier or extended in accordance with this Section 7, this Agreement shall begin on the Effective Date and continue for the term set out in the Purchase Order (the “Term”).
- 7.2 Suspension by Smartclip. Smartclip may suspend this Agreement and Publisher’s access to and use of the Network without notice (a) if Publisher permanently fails to provide necessary technical implementation of Ads received, downloaded and made available on its Publisher Web Site; or (b) repeatedly fails to take appropriate and efficient measures to ensure certain editorial quality of its Publisher Website and avoid misuse of content included in or represented by Ads; or (c) upon Smartclip’s reasonable belief that Publisher has breached any of its representations, warranties or covenants in Section 8.
- 7.3 Termination By Smartclip. Smartclip may terminate this Agreement (a) in the event of Publisher’s material breach of this Agreement, especially but not limited to the provisions set forth in Section 3 and Section 4 above, upon forty-eight (48) hours’ notice to Publisher if such breach remains uncured after the expiration of such forty-eight (48) hours’ notice period; (b) for convenience without cause, on thirty (30) days prior written notice to Publisher; (c) immediately upon Smartclip’s notice to Publisher of Smartclip’s reasonable determination that Publisher or its End-Users are using or are likely to use the Network in such a manner that could damage or cause injury to the Network or otherwise reflect unfavourably on the reputation of Smartclip which can be the case, without limitation, when the Ad is placed in illegal or discriminatory context; or (d) as otherwise agreed by mutual determination by both Parties. If this Agreement is terminated by Smartclip due to Publisher’s breach, Publisher is required to promptly return to Smartclip all documentation received and cease the further use, reception, download and making available of any Advertisement.

- 7.4 Termination By Publisher. Publisher may terminate this Agreement: (a) in the event of Smartclip's material breach of this Agreement, upon ten (10) days' notice to Smartclip if such breach remains uncured after the expiration of such ten (10) day notice period; or (b) upon fifteen (15) days' notice to Smartclip, upon receipt of notice from Smartclip of its intention to raise Fees pursuant to Section 5 and before the new Fees go into effect or (d) as otherwise agreed by mutual determination by both Parties.
- 7.5 Survival. Sections 1, 3.3, 3.4, 4.5, 4, 8, 4.9, 5, 6, 7, 8, 9, 10, 11, 12 13 and 14 shall survive termination or expiration of this Agreement for any reason.

## **8. Representation, Warranties and Covenants.**

- 8.1 Mutual Representations, Warranties and Covenants. Each Party hereto represents, warrants and covenants to the other Party that: (a) such Party has the full right, power and authority to enter into this Agreement on behalf of itself and to undertake to perform the acts required of it hereunder; (b) the execution of this Agreement by such Party, and the performance by such Party of its binding obligations and duties to the extent set forth hereunder, do not and will not violate any agreement to which it is a party or by which it is otherwise bound; and (c) when executed and delivered by such Party, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its representations, warranties, terms and conditions.
- 8.2 Publisher's Representations, Warranties and Covenants. Publisher further represents, warrants and covenants that (a) Publisher Web Sites meet the requirements according to Section 4 of this Agreement and further, (b) Publisher has read and will comply with Smartclip's privacy policy that can be found on the Smartclip Web site; (c) Publisher's use of the Network will comply with all applicable laws (including that Publisher's collection, use and storage of data in connection with or resulting from its use of the Network shall comply with all applicable privacy laws); (d) neither Publisher nor its End-User will claim own rights to the Ad; (e) Publisher will only display and distribute the Ad "as is" without illegitimately editing or modifying it and (f) Publisher will immediately and in any case remove Ads and cease to grant its End-Users access to the respective Ad in case such Ads infringe third party's Intellectual Property Rights or are unlawful or immoral for any other reason. In this case Publisher may not refuse cooperation for any reason.

**9. Disclaimer.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE BY THE PARTIES IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NO PARTY HERETO MAKES ANY REPRESENTATIONS OR WARRANTIES. THE NETWORK IS MADE AVAILABLE TO PUBLISHER "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NONINFRINGEMENT, TITLE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY THE PUBLISHER FROM SMARTCLIP OR THROUGH OR FROM THIS AGREEMENT SHALL CREATE ANY WARRANTY OR OTHER OBLIGATION NOT EXPRESSLY STATED IN THIS AGREEMENT.



## **10. Limitations of Liability.**

- 10.1 No Consequential Damages. SUBJECT TO SECTION 10.3, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING FOR THE INDIRECT LOSS OF PROFIT OR REVENUE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.
- 10.2 Liability Cap. SUBJECT TO SECTION 10.3, IN NO EVENT SHALL SMARTCLIP'S LIABILITY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (WHEN AGGREGATED WITH SMARTCLIP'S LIABILITY FOR ALL OTHER CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT) EXCEED THE TOTAL AMOUNT PAID BY SMARTCLIP TO PUBLISHER UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRIOR TO THE DATE THE LIABILITY FIRST AROSE. YOU AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION OR BE FOREVER BARRED.
- 10.3 Exceptions from Exclusions and Limitations. Nothing in this Agreement shall exclude or limit either Party's liability for: (a) breaches of Section 12; (b) with regard to Smartclip, amounts owed under Section 5; (c) breaches of a Party's indemnification obligations under Section 11 or any amounts paid or payable to third parties pursuant in connection with such obligations; (d) such Party's gross negligence or wilful misconduct or (e) in case of physical injury or health damages.
- 10.4 Representatives, Agents and Employees. The provisions of this Section 10 also apply to persons representing a Party, acting on its behalf as agent or employee of a Party. Each of these persons' actions in executing their duty vis-à-vis the Party will be attributed to the respective Party in terms of laws.
- 10.5 Allocation of Risk. The Parties agree that (a) the mutual agreements made in this Section 10 reflect a reasonable allocation of risk; and (b) that each Party would not enter into this Agreement without these exclusions and limitations on liability and the exceptions set forth above.

## **11. Indemnification.**

- 11.1 By Publisher. Publisher shall indemnify, defend and hold harmless Smartclip and its directors, officers, employees and agents and its and their respective successors, heirs and assigns (collectively, the "Smartclip Parties") against any liability, damage, loss or expense (including reasonable attorneys' fees and expenses of litigation) (collectively, "Losses") incurred by or imposed upon the Smartclip Parties or any one of them in connection with any third-party claim, suit, action, demand or judgment ("Claims") (a) alleging any fact, which, if true, would constitute a breach by Publisher of Section 8 or (b) Publisher's use of the Network other than as permitted herein; provided, however, that in any such case Smartclip will (i) provide Publisher with prompt notice of any such claim (provided that the failure to provide prompt notice shall only relieve Publisher of its obligation to the extent it is materially prejudiced by such failure and can demonstrate such prejudice); (ii) permit

Publisher to assume and control the defense of such action upon Publisher's written notice to Smartclip of Publisher's intention to indemnify; and (iii) upon Publisher's written request, and at no expense to Smartclip or its affiliates, provide to Publisher all available information and assistance reasonably necessary for Publisher to defend such claim. Publisher will not enter into any settlement or compromise of any such claim, which settlement or compromise would result in any liability to any Smartclip Party, without Smartclip's prior written consent, which will not unreasonably be withheld or delayed. Smartclip shall have the right to participate in the defense with counsel of its choice at its own expense.

- 11.2 By Smartclip. Smartclip shall indemnify, defend and hold harmless Publisher and its directors, officers, employees and agents and its and their respective successors, heirs and assigns (collectively, the "Publisher Parties") against any Losses incurred by or imposed upon the Publisher Parties or any one of them in connection with any Claim alleging (a) any fact, which, if true, would constitute a breach by Smartclip of Section 8 or (b) that the Network infringes any Intellectual Property Rights; provided, however, that in any such case Publisher will, (i) provide Smartclip with prompt notice of any such claim (provided that the failure to provide prompt notice shall only relieve Smartclip of its obligation to the extent it is materially prejudiced by such failure and can demonstrate such prejudice); (ii) permit Smartclip to assume and control the defense of such action upon Smartclip's written notice to Publisher of Smartclip's intention to indemnify; and (iii) upon Smartclip's written request, and at no expense to Publisher, provide to Smartclip all available information and assistance reasonably necessary for Smartclip to defend such claim. Smartclip will not enter into any settlement or compromise of any such claim, which settlement or compromise would result in any liability to any Publisher Party, without Publisher's prior written consent, which will not unreasonably be withheld or delayed. Publisher shall have the right to participate in the defense with counsel of its choice at its own expense.

**12. Confidentiality.** Each Party (a "Receiving Party") understands that the other Party (a "Disclosing Party") may disclose information of a confidential nature including, without limitation, product information, data, pricing, financial information, End-User information, software, specifications, research and development and proprietary algorithms or other materials that is disclosed in a manner in which the Disclosing Party reasonably communicated, or the Receiving Party should reasonably have understood under the circumstances that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used ("Confidential Information"). The Receiving Party agrees, for itself and its agents and employees, that it will not publish, disclose or otherwise divulge or use for its own purposes any Confidential Information of the Disclosing Party furnished to it by such Disclosing Party without the prior written approval of the Disclosing Party in each instance. The Parties agree that if disclosure is made to their professional advisors, auditors or bankers this shall be done subject to each party procuring each such recipient's agreement to keep such information confidential to the same extent as if such recipient were party to this agreement. The foregoing obligations shall not extend to any information to the extent that the Receiving Party can demonstrate that such information (i) was at the time of disclosure or, to the extent that such information thereafter becomes through no fault of the Receiving Party, a part of the public domain by publication or otherwise; (ii) was already properly and lawfully in the Receiving Party's possession at the time it was received by the Receiving Party free from any obligation of confidentiality, (iii) was or is lawfully received by the Receiving Party

from a third party who was under no obligation of confidentiality to the Disclosing Party with respect thereto, or (iv) is independently developed by the Receiving Party or its independent contractors who did not have access to the Disclosing Party's Confidential Information or (vi) express written consent has been given prior to disclosure. In the event that the Receiving Party is required to disclose Confidential Information in accordance with judicial or regulatory or governmental order or requirement, or any tax authority to which that party is subject or submits, wherever situated, whether or not the requirement for information has the force of law the Receiving Party shall promptly notify the Disclosing Party in order to allow such Party to contest the order or requirement or seek confidential treatment for such information. Upon termination or expiration of this Agreement, upon the request of a Disclosing Party, the Receiving Party agrees to return to the other all of such other Party's Confidential Information that is reduced to one or more writing, drawing, schematic, tape, disk or other form of documentation, or to certify to the Disclosing Party in writing that all such material has been destroyed, however, destruction is only permitted after Disclosing Party's prior approval.

### **13. Proprietary Rights**

- 13.1 Subject to express permission from Smartclip, nothing in this Agreement gives the Publisher a right to use any of Smartclip's trade names, trade marks, service marks, logos, domain names, and other distinctive brand features.
- 13.2 If the Publisher has been given express permission to use any of these brand features in a separate written agreement with Smartclip, the use of such features shall be in accordance with that agreement and any applicable provisions.
- 13.3 Subject to express authorization in writing by Smartclip, the Publisher agrees it will not use any trade mark, service mark, trade name, logo of any company or organization in a way that is likely or intended to cause confusion about the owner or authorized user of such marks, names or logos.
- 13.4 Publisher agrees Smartclip shall be permitted to disclose to Advertisers the fact that such Advertisers' Advertisements have been, are being or will be displayed on the Publisher Web Sites. This disclosure may comprise the inclusion of the Publisher's URL in Smartclip's site lists and the inclusion of the Publisher's logo in Smartclip's sales decks.

### **14. Miscellaneous.**

- 14.1 **Publicity.** Any public announcement relating to the Agreement must fairly and accurately represent the Parties' business relationship, must not conflict with this Agreement and must be approved by the other Party prior to its release.
- 14.2 **Independent Contractors.** It is the intention of Smartclip and Publisher that Smartclip and Publisher are, and will be deemed to be, independent contractors with respect to the subject matter of this Agreement, and nothing contained in this Agreement will be deemed or construed in any manner whatsoever as creating any partnership, joint venture, employment, agency, fiduciary or other similar relationship between Smartclip and Publisher.

- 14.3 Entire Agreement. This Agreement, together with the Purchase Order and all exhibits hereto, represents the entire agreement between the Parties with respect to the subject matter hereof and will supersede all prior agreements and communications of the Parties, oral or written. Except in the case of fraud, no party shall have any right of action against any party to this Agreement arising out of or in connection with any pre-contractual statement except to the extent that it is repeated in this Agreement. For the purposes of this clause “pre-contractual statement” means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of this Agreement made or given by any person at any time prior to the date of this Agreement.
- 14.4 Amendment; Waiver. No amendment to, or waiver of, any provision of this Agreement will be effective unless in writing and signed by both Parties. The waiver by any Party of any breach or default will not constitute a waiver of any different or subsequent breach or default.
- 14.5 Governing Law and Jurisdiction. This Agreement will be governed by and interpreted in accordance with the Laws of England and Wales without regard to any conflict of laws principles or rules. All disputes between the Parties shall be solved amicably, however, in case there is no amicable solution to the dispute, the Courts of England and Wales shall be exclusively competent.
- 14.6 Successors and Assigns. This Agreement may not be assigned, transferred, delegated, sold or otherwise disposed of, including, without limitation, by operation of law, without the prior written consent of the non-assigning Party; provided that either Party may assign this Agreement without consent (i) to all affiliated companies if quality standard and compliance with this Agreement is guaranteed (ii) in connection with the sale of all or substantially all its assets or other change of control or ownership. This Agreement will be binding upon and will inure to the benefit of a Party’s permitted successors and assigns. Any purported assignment, transfer, delegation, sale or other disposition in contravention of this Section 14.6, including, without limitation, by operation of law, is void.
- 14.7 Force Majeure. No Party will be liable for failure to perform or delay in performing any obligation (other than the payment of money) under this Agreement if such failure or delay is due to fire, flood, earthquake, strike, war (declared or undeclared), terrorist act, embargo, blockade, legal prohibition, governmental action, riot, insurrection, damage, destruction or any other similar cause beyond the control of such Party.
- 14.8 Notices. All notices, requests, consents, and other communications under this Agreement will be in writing, and will be delivered by hand or sent by reputable overnight courier service or electronic facsimile transmission (with a copy sent by first class mail, postage prepaid) or mailed by first class certified or registered mail, return receipt requested, postage prepaid, if to Smartclip or to Publisher, at the “Primary Contact” address indicated in the associated Purchase Order(s), or such other addresses as each Party specifies to the other Party in writing by notice given in accordance with this Section 14.8. Notices provided in accordance with this Section 14.8 will be deemed delivered: (a) immediately if personally delivered or sent by electronic facsimile transmission; or (b) if sent by overnight courier

service, twenty four (24) hours after deposit with such courier service; or (c) if sent by certified or registered mail, return receipt requested, forty eight (48) hours after deposit in the mail.

14.9 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14.10 Mandatory IASH Terms and Conditions.

(a) The publisher of the site either owns or is entitled to use the content displayed on all URLs on which activity is running;

(b) The site does not knowingly include any 'virus' or other destructive programming or device that could impair or injure any data, computer system or software;

(c) The site does not knowingly violate any applicable laws or regulations, including without limitation, false or deceptive or comparative advertising laws, gaming and gambling laws, competition laws, and criminal laws;

(d) The site does not contain content originated by or on behalf of the site publisher that is defamatory, violates any rights of privacy or publicity or constitutes a misrepresentation;

(e) The content of the site originated by or on behalf of the site publisher does not and will not infringe any Intellectual Property Rights or other proprietary rights;

(f) The publisher and the site do not engage in, promote or knowingly facilitate activities such as pirating, hacking or any other activities which are illegal under UK law.

(g) In respect of unlawful activity or content contributed to the site without the publisher's knowledge or awareness of its unlawfulness, the publisher operates a "notice and takedown" policy that complies with applicable law (currently the Electronic Commerce (EC Directive) Regulations 2002).

(h) The site publisher will use all reasonable endeavours not to include on the site those types of content forbidden by the IASH Code of Conduct and by the IASH.EU Code of Conduct. See the definitions of 'barred inventory' in Schedule C of the IASH Code of Conduct ([www.iash.org.uk](http://www.iash.org.uk)) and the definitions of 'barred inventory' ('gesperrtes Inventar') in Schedule C ('Aufstellung C') of the IASH.EU Code of Conduct ([www.iash.eu](http://www.iash.eu)). A list of inappropriate sites will be constantly maintained and updated by IASH and by IASH.EU and provided to all members of IASH and IASH.EU.

(i) The site publisher will use all reasonable endeavours to ensure, that inventory booked on this site will not be re-sold or re-brokered.